

Application No. : 10/639,070
Filed : August 12, 2003

REMARKS

Claims 1-54 were pending in the application. By this paper, Applicant amended Claims 23, 36, and 50. Accordingly, Claims 1-54 are presented for examination herein.

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Information Disclosure Statement (IDS)

Applicant submits herewith an IDS and PTO Form 1449 citing forty-three (43) references for consideration by the Examiner.

10 *§102 Rejections*

Claim 1 – Per the Office Action, the Examiner has rejected Claim 1 under 35 U.S.C. §102(e) as being anticipated by Eldering (U.S. Patent No. 6,615,039). Applicant respectfully disagrees and traverses.

15 Eldering neither teaches nor suggests, “in response to a detection of the indicator, determining an audience currently receiving the programming content,” as Applicant has specifically claimed in Claim 1. The Examiner has asserted that this limitation is met by Eldering “assigning a subgroup address to subgroups.” While assigning a subgroup address to a subgroup assumes the existence of a subgroup, it does not automatically follow that this subgroup must be formed from an audience currently receiving program content, as Applicant 20 has specifically claimed. The Examiner has provided no support for this particular limitation anywhere within Eldering.

25 While the Examiner has pointed to Eldering, col. 14 at lines 65-67 to support his position, this passage primarily concerns itself with the insertion of advertisements into program streams, where the insertion is based on a relationship between subgroup addresses and advertising identifiers. Applicant respectfully asserts that the insertion of advertisements into program streams has no bearing on whether the subgroups are part of an audience currently receiving programming content, as Applicant has specifically claimed.

30 Since not every element of Applicant’s claim is taught within the reference, Applicant respectfully submits that the §102(e) rejection was therefore improper. As such, Claim 1 is believed to distinguish over the art of record, and be in condition for allowance.

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Claims 2-8 depend directly or indirectly on Claim 1, and are therefore also respectfully in condition for allowance.

5 **Claim 9** – The Examiner has rejected Claim 9 under 35 U.S.C. §102(e) as being anticipated by Eldering. Applicant respectfully disagrees and traverses.

Elderding neither teaches nor suggests, “in response to a detection of the message, identifying a set of one or more user terminals which is currently receiving the program stream,” as Applicant has specifically claimed. The Examiner has asserted that this limitation is met by Elderding “assigning a subgroup address to subgroups.” As stated above with respect to Claim 1, 10 while assigning an address to a subgroup assumes the existence of a subgroup, it does not automatically follow that the subgroup must be formed from a set of one or more user terminals currently receiving program content.

The Examiner has pointed to Elderding col. 14, lines 60-64 in support of this proposition. 15 Applicant respectfully submits that these claim elements of Elderding concern assigning a subgroup address to each subgroup, assigning an advertisement identifier to each advertisement stream, and then creating a relationship between the subgroups and the advertisement identifiers. There is nothing in these claim elements that would teach or remotely suggest that Elderding’s subgroups are formed from a set of one or more user terminals currently receiving programming content, as Applicant has specifically claimed.

20 Since not every element of Applicant’s claim is taught within the reference, Applicant respectfully submits that the §102(e) rejection was therefore improper. As such, Claim 9 is believed to distinguish over the art of record, and be in condition for allowance.

Claims 10-22 depend directly or indirectly on allowable Claim 9, and are therefore also respectfully in condition for allowance.

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Claim 23 – The Examiner has rejected Claim 23 under 35 U.S.C. §102(e) as being anticipated by Elderding. By this paper, Applicant has amended Claim 23 to include limitations relating to the recited channels that are allocated being a function of the number of the groups and the number of program channels currently being requested by the audience.

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Support for this amendment is replete throughout Applicant's specification, and can be found specifically, *inter alia*, at page 11, lines 23-25. Accordingly, no new matter has been added by this amendment.

5 Applicant respectfully asserts that Eldering neither teaches nor suggests the number of available transmission channels that are allocated being a function of the number of the groups and the number of program channels currently being requested by the audience, as Applicant has specifically claimed.

As such, Applicant respectfully submits that amended Claim 23 is distinguishable over the prior art, and is presently in condition for allowance.

10 Claims 24-27 depend directly or indirectly on Claim 23 and are therefore also in condition for allowance.

Claim 28 – The Examiner has rejected Claim 28 under 35 U.S.C. §102(e) as being anticipated by Eldering. Applicant respectfully disagrees and traverses.

15 Eldering neither teaches nor suggests, “a processing unit, responsive to a detection of the indicator, for determining an audience currently receiving the programming content,” as Applicant has specifically claimed in Claim 28. The Examiner has asserted that Claim 28 is rejected for the same reasons that Claim 1 was rejected. More specifically, the Examiner has asserted that this limitation is met by Eldering “assigning a subgroup address to subgroups” (col. 20 14, lines 65-67).

The cited passage neither teaches nor suggests any means or mechanism for “determining an audience currently receiving the programming content.” Since not every element of Applicant's claim is contained within the reference, Applicant respectfully submits that the §102(e) rejection was improper. Therefore, Claim 28 distinguishes over the art of record, and 25 presently stands in condition for allowance.

Claims 29-35 depend directly or indirectly on Claim 28, and are therefore respectfully also in condition for allowance.

30 **Claim 36** – The Examiner has also rejected Claim 36 under 35 U.S.C. §102(e) as being anticipated by Eldering. By this paper, Applicant has amended Claim 36 to include limitations relating to: (i) a module for dynamically assigning transmission channels; and (ii) a mechanism

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for providing at least one of the data streams over a dynamically assigned transmission channel to a selected one of the identified groups.

Support for these amendments is replete throughout Applicant's specification, and can be found specifically, *inter alia*, at page 10, lines 11-16, and at Fig. 8. No new matter has been
5 added by this amendment.

Applicant respectfully asserts that Eldering neither teaches nor suggests: "a module for dynamically assigning transmission channels," as Applicant has specifically claimed. As such, amended Claim 36 is distinguishable over the prior art and is therefore presently in condition for allowance.

10 Claims 37-49 depend on Claim 36, and are therefore also respectfully in condition for allowance.

15 **Claim 50** – The Examiner has rejected Claim 50 under 35 U.S.C. §102(e) as being anticipated by Eldering. By this paper, Applicant has amended Claim 50 to include limitations relating to the number of available transmission channels allocated by the recited server being a function of the number of the groups and the number of program channels currently being requested by the audience.

20 Support for this amendment is replete throughout Applicant's specification, and can be found specifically, *inter alia*, at page 11, lines 23-25. No new matter has been added by this amendment.

Applicant respectfully asserts that Eldering neither teaches nor suggests the number of available transmission channels allocated being a function of the number of the groups and the number of program channels currently being requested by the audience, as Applicant has specifically claimed.

25 As such, amended Claim 50 is distinguishable over the prior art, and is therefore respectfully now in condition for allowance.

Claims 51-54 depend directly or indirectly on Claim 50, and are therefore also respectfully in condition for allowance.

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Other Remarks

Applicant hereby specifically reserves all rights of appeal (including those under the Pre-Appeal Brief Pilot Program), as well as the right to prosecute claims of different scope in another continuation or divisional application.

5 Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention, and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by
10 the Examiner, based on such cancellations or additions.

Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims.

If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

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Respectfully submitted,

GAZDZINSKI & ASSOCIATES

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